

BOARD OF COMMUNITY HEALTH
June 14, 2007

The Board of Community Health held its regularly scheduled meeting in the Floyd Room, 20th Floor, West Tower, Twin Towers Building, 200 Piedmont Avenue, Atlanta Georgia. Board members attending were Richard Holmes, Chairman; Ross Mason, Vice Chairman; Mark Oshnock, Secretary; Kim Gay; Frank Jones; Dr. Ann McKee Parker; and Richard Robinson. Commissioner Rhonda Medows was also present. Dr. Inman “Buddy” English was absent. (A list of Attendees and Agenda are attached hereto and made official parts of these Minutes as Attachments # 1 and # 2).

Approval of Minutes

Mr. Holmes called the meeting to order at 10:45 a.m. The Minutes of the Meeting were UNANIMOUSLY APPROVED AND ADOPTED.

Mr. Holmes asked for the Committee reports.

Committee Reports

Kim Gay, Chair of the Care Management Committee, reported that the Committee reviewed the regular monthly reports—enrollment, capitation payments and claims payments reports. WellCare of Georgia presented at the committee meeting, giving a review of their operations.

Mark Oshnock, Chair of the Audit Committee, reported that the Committee discussed the status of the FY 2007 Independent Audit and the final Resolution for Other Post Employment Benefits (OPEB) accounting, reporting and funding. He said Carie Summers, Chief Financial Officer, would further discuss later in the board meeting.

Commissioner’s Comments

Dr. Rhonda Medows said the Department had several announcements and several items for follow up. She said that at the Governor’s the Department is presenting a public notice to lift the enrollment freeze in the PeachCare for Kids program and to allow enrollment up to 295,000 children. Additionally, the Department would reassess the enrollment limit if/when Congress authorizes the programs. Also several public notices that provide rate increases for some providers in the Medicaid program will come before the board for review and final approval. They are Nursing Home Services, SOURCE, Dialysis Services, and CIS and CISS. Dr. Medows announced the appointment of Nancy Goldstein as the State Health Benefit Plan Director. Dr. Medows said in regards to Certificate of Need (CON), the board has before them recommendations from the Health Strategies Council as well as letters of information and support of general surgery as a single specialty.

Mr. Holmes thanked Dr. Medows and asked John Hammack, Managing Director, State Health Partnership, Affiliated Computer Services Inc. (ACS), to give an update on the data breach. Mr. Hammack read from a prepared statement. He thanked the board for the opportunity to discuss ACS’s efforts to locate a lost CD containing personal information for Georgia Medicaid and PeachCare members. ACS’s efforts to mitigate any potential harm relating to the lost CD are as follows:

- the CD has not been found;
- there is no indication that any of the personal data contained on the lost CD has been accessed or used in any way;
- ACS activated a corporate response team and assisted in the investigative process by conducting searches of the facility where the CD was prepared and given to the carrier for delivery, interviewed every employee who might have come in contact with the CD, and worked closely with the carrier to explore every possibility along the route including searches of the carriers’ facility and trucks;
- ACS followed guidance and coordination with DCH to identify everyone who might have been affected (approximately 2.9 million individuals);
- From April 13 to May 2, ACS mailed letters to all those individuals advising how to protect their identity and credit rating, how to access and receive their credit reports, which information to review and monitor, the website and phone number of the Federal Trade Commission for additional information, and how to place a fraud alert on their credit file;
- ACS established a toll free number and took over 28,079 calls to date;

- ACS is implementing a corrective action plan within the Georgia Health Partnership that includes an in depth review of all program interfaces with DCH, other state agencies, federal agencies, and DCH vendors, to determine the appropriate safeguards for each data exchange;
- ACS is changing mailroom processes for shipment preparation and hand off to the shipper, using upgraded secure delivery methods including locked containers;
- All workforce members have received refresher training and privacy and security policies and procedures.

Mr. Mason asked when did ACS learn the disc was lost and when did ACS notify DCH. Mr. Hammack said as he recalls it was the evening of April 5. Ms. Gay asked when ACS notified Dr. Medows. Dr. Medows said two questions were being asked; when did ACS realize that the CD was lost and when did ACS notify DCH. Mr. Hammack said the end user of the data had not received the data three or four days after shipment which was the third week of March. ACS placed a missing report with the carrier and regenerated the information and delivered it to the Department to be given to the end user in Maryland. When ACS discovered for a fact that the CD was missing and problems with its disappearance, DCH was notified. Mr. Holmes asked if ACS has in place a confirmation trail other than the carrier so there isn't any guess work as to whether deliveries are made. Mr. Hammack said yes. Mr. Oshnock asked why was the information on the CD unencrypted. Mr. Hammack said ACS's routine policy is to encrypt the discs that are going out or send the information via some secure method; he said in this situation a mistake was made. Mr. Holmes asked if this was the first incident of data breach ACS had encountered. Mr. Hammack said he did not have that information but this has happened to virtually every company that handles data. Mr. Jones asked if this was a routine process to send data via CD. Mr. Hammack said that they send out information daily and interfaces that exchange hundreds of thousands of records a day. Mr. Holmes said in this day of identify fraud and personal data, ACS needs to make sure that as the Department's vendor, controls are in place to protect the information that is in its possession.

Department Updates – Chief, Medical Assistance Plans

Mark Trail, Chief, Medical Assistance Plans, gave an overview of the PeachCare for Kids Public Notice. The public notice would resume enrollment in the program effective July 12, 2007; however the Department will maintain an enrollment limit of 295,000 children. This enrollment limit has been defined by the Department in order to ensure that the shortfall funding and redistribution of 2004-2005 national surplus adequately supports the ongoing provision of healthcare to members through September 30, 2007. The enrollment limit will be reassessed based on availability of funding once SCHIP is reauthorized or extended by Congress. Mr. Mason MADE a MOTION to approve the PeachCare for Kids Public Notice to be published for public comment. Mr. Oshnock SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the PeachCare for Kids Public Notice is hereto attached and made an official part of these Minutes as Attachment # 3).

Department Updates – Chief Financial Officer

Carie Summers, Chief Financial Officer, began review of four public notices that were approved to be published for public comment at the last board meeting. A public hearing on the four notices was held May 23. The Children's Intervention Services and Children's Intervention School Services Public Notice increases reimbursement for procedure code 92507 from a current rate of \$47.82 to \$62.53 effective for dates of service on and after July 1, 2007 for fee-for-service Medicaid and PeachCare for Kids program. This change was appropriated in the Department's Fiscal Year 2008 budget. Mr. Mason MADE a MOTION to approve the Children's Intervention Services and Children's Intervention School Services Public Notice. Mr. Oshnock SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the Children's Intervention Services and Children's Intervention School Services Public Notice is hereto attached and made an official part of these Minutes as Attachment # 4).

The Service Options Using Resources in Community Environments (SOURCE) Public Notice increases the rate paid for SOURCE case management from \$150 to \$175 effective for dates of service on and after July 1, 2007 for fee-for-service Medicaid. These dollars were appropriated in the Department's Fiscal Year 2008 budget. Mr. Oshnock MADE a MOTION to approve the Service Options Using Resources in Community Environments Public Notice. Ms. Gay SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the Service Options Using

Resources in Community Environments Public Notice is hereto attached and made an official part of these Minutes as Attachment # 5).

The Nursing Home Services Public Notice would update to the FY 06 cost report, apply a 1.19% growth allowance and make an adjustment to decrease the nursing home provider fee from \$13.11 per day to \$12.21 per day effective July 1, 2007. Ms. Summers said public comments received from the Georgia Health Care Association (GHCA) concerned updating to the FY 06 cost report and not being able to provide two years of inflation to get up to a fully funded 2008 reimbursement methodology, which would require a growth allowance of 3-6%. She said the GHCA made several suggestions on how the Department could fully fund up to least 3%. Ms. Summers said for the Department to go from the 1.19 %, which has been funded, up to at least the 3.1% that the GHCA is asking for would cost about \$8 million additional state funds. She said the Department has reviewed those recommendations and determined that those dollars do not exist and for the most part have been accounted for in the Department's budget. She said there is potential for savings in the audit adjustment area; however, the Department's position is any savings realized from audit adjustments will go toward offsetting the reduction of nursing home rates. Mr. Mason MADE a MOTION to approve the Nursing Home Services Public Notice. Mr. Oshnock SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. Ms. Gay abstained from voting. The MOTION was APPROVED. (A copy of the Nursing Home Services Public Notice is hereto attached and made an official part of these Minutes as Attachment # 6).

The Dialysis Services Public Notice changes the monthly rate the Department pays for technical dialysis services. The current rate, \$1477.44 a month, would increase to \$1609.53 per month effective July 1, 2007 in the Medicaid fee-for-service program. Mr. Mason MADE a MOTION to approve the Dialysis Services Public Notice. Mr. Oshnock SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the Dialysis Services Public Notice is hereto attached and made an official part of these Minutes as Attachment # 7.)

Ms. Summers continued with an overview of the corrected FY 2008 Employer Rate Contribution Resolution. She said the resolution that the board considered and approved at the May board meeting needs a correction. She drew the board's attention to the last paragraph that speaks to the amount of funds that are to be contributed to the trust fund for retired teachers and non-certificated employees. That amount was established originally at \$307,163,848 and approved by the Board. She said in subsequent discussions with the Governor's Office of Planning and Budget (OPB), they pointed out that the amount available is \$279,209,528. She asked the board for favorable consideration to approve this revised amount. Mr. Oshnock said the Audit Committee discussed this correction to the Resolution this morning and MADE a MOTION to adopt the corrected Resolution for SHBP Employer Rates for FY 2008. Mr. Mason SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the corrected Resolution for SHBP Employer Rates for FY 2008 is hereto attached and made an official part of these Minutes as Attachment # 8).

Finally Ms. Summers discussed a Resolution for Establishment of Segregated Employer Contributions for Active and Retired Members for the State Health Benefit Plan for FY 2007. This Resolution was discussed in three Audit Committee meetings and allows the Department to begin the process of segregating assets and liabilities between retired and active members of the SHBP. She said this is a Governmental Accounting Standards Board requirement (GASB 43) that was effective for the SHBP beginning in State Fiscal Year 2007. Mr. Oshnock said the Audit Committee has spent three meetings discussing this and are in agreement with the approach that the Department is proposing to take and recommends that the Resolution be approved. Dr. Parker MADE a MOTION to adopt the Resolution for Establishment of Segregated Employer Contributions for Active and Retired Members for the State Health Benefit Plan for FY 2007. Ms. Gay SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED. (A copy of the Resolution for Establishment of Segregated Employer Contributions for Active and Retired Members for the State Health Benefit Plan for FY 2007 is hereto attached and made an official part of these Minutes as Attachment # 9).

Department Updates – General Counsel

Charemon Grant, General Counsel, said the Department is presenting for initial adoption changes to the State Health Benefit Plan rules relating to limitations on preexisting conditions. She said currently in the event that a new member enrolls in two of the SHBP healthcare options and has a preexisting condition, benefits are limited to \$1000 for the treatment of that preexisting condition until that person has been covered under the plan for

a period of 12 months. The Department has determined that the cost associated with administering this limitation outweighs the cost savings. Additionally, only two of the SHBP's healthcare options implement this limitation. Based on the foregoing, the Department recommends changes to 111-4-1-.03 and 111-4-1-.10. Ms. Grant and Trudie Nacin, Director of Operations, State Health Benefit Plan, addressed questions from the Board concerning comparing the SHBP's preexisting condition limitations to commercial plans and the estimated costs to the SHBP for the claims that will be paid if the rule changes were implemented. Mr. Jones said he finds it hard to prudently take the limitations out of the plan. A discussion ensued. Dr. Parker asked the Department for more information about the purpose of this rule change. Mr. Jones asked for financial information to include prescription drugs benefits when considering the costs related to preexisting conditions. Dr. Parker MADE a MOTION to table changes to SHBP Rules 111-4-1-.03 and 111-4-1-.10 until additional information is received. Mr. Jones SECONDED the MOTION. Mr. Holmes called for votes; votes were taken. The MOTION was UNANIMOUSLY APPROVED.

Ms. Grant said a motion was passed at the Health Strategies Council during its last meeting that was held on May 18, 2007, recommending that general surgery be considered a single specialty with the same rights as all other specialties. Ms. Grant said in August 2004 the Department was considering modifying its rules wherein general surgery would be considered a single specialty. The Department sought an opinion from the Department of Law (the Attorney General's Office) and the Department of Law opined that the Department of Community Health did not have the latitude to make such changes. The Attorney General's Office pointed to the Courts examination of a 1984 regulation which excluded general surgery from the definition of limited purpose ambulatory surgery program. She reviewed legal citations on the subject: the 1984 DCH regulation previously mentioned; the 1991 statutory exception for the office space physician owned single specialty ambulatory surgery exemption; and a 1998 DCH regulation that defines general surgery as a multi-specialty. Ms. Grant said in June 2005 the CON Commission began meeting to discuss the efficacy of the Certificate of Need program. Among other issues, the Commission focused on the general surgery issue. In February 2006 the Health Strategies Council made a motion to recommend that general surgery be considered a single specialty. That motion was tabled to await the CON Commission's final report. In December 2006 the CON Commission issued its final report and in the final report, it recommended general surgery should be treated as a single specialty. In March 2007 the Health Strategies Council made another motion to recommend that general surgery be considered a single specialty but tabled the motion awaiting legislative change. The 2007 General Assembly did not yield legislation that addressed this issue. As previously mentioned, the Health Strategies Council adopted a resolution recommending that general surgery be considered a single specialty. Ms. Grant said the Department has asked the Attorney General's Office to address the various actions that may be available to the board. She asked Sid Barrett of the Attorney General's Office to speak to the Board.

Sid Barrett, Senior Assistant Attorney General, stated he is tasked to advise the Department of Community Health on its CON matters. He said the Attorney General's Office has no views as to whether general surgery should or should not be opened up as a single specialty. He said his understanding is both the CON Commission and the Health Strategies Council have concluded as a matter of policy that the public would be best served by opening up the single specialty exemption to general surgeons. He said if the board agreed with that and thought it was good public policy, his office would help to achieve that goal. He said there are two suggestions that have been made by the various interest groups and the members of the public: 1. try achieving this by promulgating a regulation - changing the existing regulations and saying now as a matter of regulatory law, we will open up this exception to general surgeons; 2. seek a legislature solution - in 2008 ask the Legislature to amend this one section of the CON laws to specifically include general surgery. He said his advice to the Board is to seek a change in the law. Mr. Barrett said lawyers have been debating for a couple of years now the interpretation and effect of a pair of judicial decisions that came down a couple years ago. These are the Albany Surgical decisions—one from the Georgia Court of Appeals, a second one a year later from the Georgia Supreme Court. He said those opinions contain specific and very clear statements that it was the intent of the General Assembly, in passing the current law, that general surgery not be eligible for the single specialty exemption. He stated that if the Board chose to recommend that the legislative solution be pursued, that is go to the 2008 General Assembly and by well drafted and competent language revise the statute, he believes there is almost no risk at all that that revision would be overturned in the courts. Legislation would become effective in July with a regulation on the books by the end of the summer of 2008. He said if the Board chooses to do this by regulation, he expects a court challenge the day the policy becomes effective with the likelihood of this policy going into effect in late 2009 or early 2010. If the Department is unsuccessful in court, they would have to start over and seek a legislative solution in 2010.

Mr. Robinson asked if the Legislature in its next Session determines it is a single specialty, would this be subject to a court challenge. Mr. Barrett said there is almost no possibility of success in challenging a properly drafted legislative amendment.

Mr. Holmes asked if Mr. Barrett was saying the Board has no authority to make the changes. Mr. Barrett said that is his reading of the Georgia Court of Appeals and the Georgia Supreme Court's opinion.

Dr. Medows shared with the Board her opinion. Her opinion is general surgery is a single specialty and that is the subject that needs to be addressed today. She said if the Board believes it is a single specialty, it should acknowledge it and seek those options that do this formally. She said she believes there are several options: 1. do nothing; 2. pursue a rule change through a resolution or direction to the Department regardless of anticipated litigation; 3. direct the Department to pursue legislative change in the next Session; or 4. do both—pursue the rule change and legislative action.

Dr. Parker said while this may be the right thing it sounds like it is not within the Board's purview to make that decision—it is the purview of the Legislature. Dr. Medows said when she asked the Board about deciding what is the right thing to do, she is asking the Board for direction to seek some type of change if it agrees it is a single specialty, whether it is through legislation, rule or both.

Mr. Holmes said the Board has never made that a firm determination on this issue. He said he and the Commissioner both served on the CON Commission and the CON Commission report supports Dr. Medows' personal beliefs that general surgery should be considered a single specialty. Dr. Parker asked if the Board agrees that general surgery should be considered a single specialty, are the choices do nothing, a resolution now, or legislative change later. Mr. Holmes said the options are--assuming the Board affirms that general surgery is a single specialty—doing nothing, pursue a Resolution encouraging the General Assembly to amend the statute, or the Board could ask the Department to prepare rules or do a combination of both.

Mr. Holmes said the Health Strategies Council, by Resolution, has recommended that the Board take action. He said the Council is not an official part of this board, but they are established to provide guidance and strategy for the State and also information and direction to the Board. They are appointed by the Governor and they have all the cross section of knowledge and specialties and so forth and are saying to the Board that their belief is it is a single specialty, and pretty much they are recommending to the Board to take action. He asked if there was any opposition to that.

Mr. Oshnock asked what basis the Board had to make that call as a board. Mr. Holmes said based on the Health Strategies Council's expertise and recommendation would be the basis he would use.

Mr. Robinson pointed to the data submitted by AMA and the surgeons group. He said they all have, like any specialty, multiple years of training beyond medical school. He said if you look at how they practice, the data indicates that the hospitals recruit them as a single specialty and give them privileges as a single specialty so he thinks there's more evidence than just this letter from the Health Strategies Council.

Mr. Barrett said the Board already has a sufficient evidentiary basis to go either way. He stated it is a policy matter that the Board already has enough evidence from the CON Commission alone to make an informed judgment either way. He said he thinks the only legal question is how best to carry that into effect.

Mr. Robinson said if the Board wanted to achieve giving general surgeons single specialty designation, the quickest way to do it is through the General Assembly, not through litigation and the courts. But if the Board chose to go that route and it did get into court and if the Legislature passed a law that says it is single specialty, would it render the case moot? Mr. Barrett said he believes it would. Mr. Robinson continued by asking if the General Assembly failed to act or acted differently, would the case have a basis to keep going forward? Mr. Barrett said yes. He said the courts seem to have placed great stock in the fact that the General Assembly has not acted in many, many years to correct the agency's long standing policy of declaring general surgeons to be ineligible. The courts may very well interpret the 2008 General Assembly's refusal to act as further proof that that was what they meant in 1991.

Mr. Holmes asked Mr. Barrett if the Board asked the Department to create rules that identify general surgery as a single specialty, would the court challenge be whether the board has the authority or whether it is a single specialty. Mr. Barrett said the challenge most likely would be to the Board's legal authority to pass the regulation.

Mr. Jones asked if the Board decided to promulgate a regulation, what would be the normal steps for promulgating rules. Ms. Grant reviewed the timeline and process for promulgating rules. She said if the board chose to promulgate rules, the rules would be presented in July, conduct a public hearing in August, and present the rules for final adoption in September. The rules would be sent to the Health and Human Services Committees Chairs for approval unless he or she decides the rule should be brought before the full committee when the Legislature convenes. Rob Rozier, Director, Health Planning Division, added that if the chair of the Committee decides that they want the rule to go to the full committee, then the rule cannot take effect until the Legislature is in Session and the full committee takes it into consideration.

Mr. Holmes asked if the members agreed that general surgery is a single specialty. He asked for a show of hands of those members who support the notion. Ms. Gay, Dr. Parker, Mr. Jones, Mr. Robinson, and Mr. Mason voted affirmatively. Mr. Oshnock abstained.

Mr. Oshnock said the Board really only has one alternative and that is a resolution that recommends that the General Assembly address this issue. He said he did not clearly understand the impact of this decision as it relates to CON regulations and from his standpoint, it is very clear in hearing the discussion that a resolution saying this is a General Assembly matter and they should address it is the clear solution.

Mr. Jones asked Ms. Grant if she had stated in her comments that the CON Committee actually resolved that general surgery was a single specialty by majority vote. Mr. Holmes said the CON Commission consisted of a range of folks in this industry, both doctors and hospitals, and there was plenty of representation with both points of view. That Commission lasted a year or so and a vast majority voted to accept what the Health Strategies Council is recommending. That same issue came up and came out of the CON Commission and was presented to the General Assembly. There was no action taken on that whole recommendation. Mr. Oshnock asked why no action was taken on the CON Report recommendations. Dr. Medows stated that the recommendations were included in several different bills that were actually presented during the Legislative Session and was all included into an entire CON reform package.

A discussion ensued. Dr. Parker said her preference is to go ahead and accept that this is a single specialty and pass the resolution. Mr. Robinson said he thinks the quickest and cheapest way—that is no litigation—to get it resolved is put it in the Legislature and let them decide. Mr. Jones said he was in favor of two motions: one for the Legislative route, and one to go ahead and start the regulation route.

Mr. Jones MADE a MOTION to approve the Resolution as stated. Dr. Parker SECONDED the MOTION. Mr. Oshnock MADE a MOTION to AMEND the Resolution to add the words "consider amending" to read "Therefore, be it resolved, that this Board strongly recommends that the General Assembly *consider amending* ..." Mr. Holmes asked Mr. Jones if he accepted this FRIENDLY AMENDMENT to the MAIN MOTION. Mr. Jones did not accept the FRIENDLY AMENDMENT. Mr. Holmes called for votes on the MAIN MOTION; votes were taken. The MOTION was approved with one dissenting vote from Mr. Oshnock. (A copy of the Health Strategies Council Resolution and the Board's Resolution to the General Assembly are hereto attached and made official parts of these Minutes as Attachments # 10 and 11 respectively).

Mr. Jones MADE a MOTION to ask the Department to pursue the process of promulgating regulations to identify general surgery as a single specialty. Mr. Mason SECONDED THE MOTION. A discussion ensued. Mr. Jones WITHDREW the MOTION.

New Business

Mr. Holmes asked Mr. Mason to represent the Board at the public hearing for the PeachCare for Kids Public Notice.

Adjournment

There being no further business to be brought before the Board at the meeting Mr. Holmes adjourned the meeting at 12:35 p.m.

THESE MINUTES ARE HEREBY APPROVED AND ADOPTED THIS THE _____ DAY OF _____, 2007.

RICHARD L. HOLMES
Chairman

ATTEST TO:

MARK D. OSHNOCK
Secretary

Official Attachments:

- #1 List of Attendees
- #2 Agenda
- #3 PeachCare for Kids Public Notice
- #4 CIS and CISS Public Notice
- #5 SOURCE Public Notice
- #6 Nursing Home Services Public Notice
- #7 Dialysis Services Public Notice
- #8 Resolution for SHBP Employer Rates for FY 2008 (corrected)
- #9 Resolution for Establishment of Segregated Employer Contributions
for Active and Retired Members for the SHBP for FY 2007
- #10 Health Strategies Council Resolution
- #11 Board Resolution (to the General Assembly)